

Committee: IDEA
Drafter: RO
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New Title?: Yes
Add Emergency?: No
Date: March 3, 2022

Representative Roberts Amendment to
LD 1168
An Act To License Operators of Personnel Hoists

New Title: An Act To License Operators of Hoisting Equipment

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-A, sub-§50 is enacted to read:

50.

State Board of Licensure for Hoisting
Equipment Operators

\$35/day

32 MRSA §18602

Sec. 2. 32 MRSA c. 147 is enacted to read:

CHAPTER 147

HOISTING EQUIPMENT OPERATORS

§18601. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. “Board” means the State Board of Licensure of Hoisting Equipment Operators.

2. Chief inspector. “Chief inspector” has the same meaning as the term defined in section 15202, subsection 2-A.

3. Commissioner. “Commissioner” means the Commissioner of Professional and Financial Regulation.

4. Construction, demolition or excavation work. “Construction, demolition or excavation work” means commercial construction, demolition or excavation work as defined by the board by rule.

5. Crane. “Crane” means power-operated equipment that can hoist, lower and horizontally move a suspended load and that is covered by 29 Code of Federal Regulations Part 1926, Subpart CC as described in 29 Code of Federal Regulations, Section 1926.1400 (2020).

6. Hoisting equipment. “Hoisting equipment” means cranes and personnel hoists.

7. Hoisting equipment operator. “Hoisting equipment operator” means a person who operates hoisting equipment.

8. License. “License” means a license issued by the board granting a person the authority to act as a hoisting equipment operator in this State.

9. Licensed hoisting equipment operator. “Licensed hoisting equipment operator” means a person licensed by the board to operate hoisting equipment pursuant to this chapter.

10. Operator-in-training. “Operator-in-training” means a person who has not been licensed by the board to operate hoisting equipment but who may operate hoisting equipment under supervision in accordance with section 18606.

11. Personnel hoist. “Personnel hoist” means a hoist or elevator that is not an integral part of a building, is installed inside or outside of a building or structure during construction, alteration or demolition operations and is used to raise and lower workers and other personnel connected with or related to the structure, as described in ANSI/ASSE A10.4 (2016). “Personnel hoist” does not mean a hoist for raising and lowering materials that is not designed to carry personnel.

§18602. State Board of Licensure for Hoisting Equipment Operators

1. Establishment. The State Board of Licensure for Hoisting Equipment Operators, as established by Title 5, section 12004-A, subsection 50, shall administer of this chapter.

2. Membership. The board consists of the chief inspector and 4 members appointed by the Governor as follows:

A. One member who represents a trade union of employees involved in the operation of hoisting equipment;

B. One member who is a licensed hoisting equipment operator under this chapter;

C. One member who represents the Maine State Building and Construction Trades Council or successor organization;

D. One member who represents the Department of Labor.

Each member of the board must be a citizen of the United States and a resident of this State.

3. Term; removal. Appointments to the board under subsection 2 are for 5-year terms and are subject to the provisions of Title 10, section 8009. The Governor may remove an appointed member of the board for cause.

4. Organization and meetings. The board shall meet at least once a year to conduct its business and to elect its officers. Additional meetings may be held as necessary to conduct the business of the board and may be convened at the call of the chair or a majority of the board members. The board shall elect or annually appoint a chair and vice-chair. A quorum of the board is 3 members. The board may adopt and have an official seal.

5. Compensation and expenses. Members of the board are entitled to compensation according to the provisions of Title 5, chapter 379. Clerical expenses may not be allowed any member of the board, except as provided in subsection 6.

6. Fund; receipts and disbursements. The Hoisting Equipment Operator Fund, referred to in this section as “the fund”, is established as a nonlapsing fund within the department for use by the board. The board shall receive and account for all funds received by the board under this chapter and shall pay those funds to the Treasurer of State for deposit in the fund. The board may make expenditures from the fund only for the purposes reasonably necessary for the proper administration of this chapter and only upon itemized vouchers approved by a majority of the board, signed by the chair of the board and presented to the Treasurer.

7. Records and reports. The board shall keep records and minutes necessary to the ordinary conduct of its functions. Not later than August 1st of each year, the board shall submit to the commissioner a report of its transactions of the preceding fiscal year ending June 30th and shall transmit to the commissioner a complete statement of the receipts and expenditures of the board, attested by affidavits of the chair.

8. Roster of licensed hoisting equipment operators. The board shall maintain a roster of all active licensed hoisting equipment operators on its publicly available website.

9. Conflicts and duties. Board members shall act specifically in the interest of the public at large. Board members who have a potential conflict of interest shall recuse themselves from the discussion and voting of any business in which the members have a private interest.

10. Powers and duties of the board. The board has the following powers and duties in addition to those otherwise set forth in this chapter:

A. The board shall, in accordance with subsection 11, establish for licensing purposes under this chapter, as least 2 classes of license, on for operation of cranes and one for operation of personnel hoists. The board may create further classifications for

licensing purposes based on the size, weight, common usage, capacity, power source or other such characteristics of the equipment to be operated;

B. The board may conduct an investigation on its own motion or on written complaint filed with the board regarding a licensee's potential noncompliance with or violation of this chapter or of any rules adopted by the board;

C. When conducting an investigation under this paragraph, the board may hold hearings and subpoena witnesses, records and documents to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise necessary to the fulfillment of the board's responsibilities under this chapter. Hearings must be conducted in conformity with Title 5, chapter 375, subchapter 4, as applicable; and

D. The board may enter into contracts to carry out the board's responsibilities under this chapter.

11. Rulemaking authority. The board shall establish guidelines and adopt rules necessary for the proper administration and enforcement of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must include, but are not limited to:

A. Licensing classifications and standards under this chapter;

B. Requirements for examinations and licensure renewal;

C. Criteria for certification of medical fitness for licensure under this chapter;

D. Operational guidelines and monitoring requirements for the supervision and work of an operator-in-training; and

E. Fees for licensure under this chapter. The fees must be reasonable, equitable and designed to produce in aggregate no more than the amount necessary for the proper administration of this chapter, except that the fee for any one purpose may not exceed \$100.

§18603. Role of commissioner

The commissioner shall act as a liaison between the board and the Governor. The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter.

The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this chapter.

§18604. Hoisting equipment operator license required

1. License required. Except as provided under subsection 2, beginning January 1, 2024, a person may not act as a hoisting equipment operator during construction, demolition or excavation work without a license issued under this chapter or during any period in which that person's license has expired or has been suspended or revoked.

2. Exceptions. A license to operate hoisting equipment is not required:

A. For a person being trained in hoisting equipment operation on or after January 1, 2024 in accordance with standards established under section 18606;

B. In cases of emergency, during which operation of hoisting equipment without a license may be permitted for a period not exceeding 2 consecutive days, as long as the board is immediately notified. Such periods may be extended by the board when necessary to avoid undue hardship, but no single extension may exceed a period of 7 consecutive days;

C. For elevator inspectors or elevator contractors or mechanics engaged in the construction, maintenance or repair of elevators or elevator hoist ways pursuant to Chapter 133;

D. To operate automatic operation or continues pressure operation passenger or freight elevators or existing shipper rope elevators, when equipped with proper safeguards, as established by the board in rule, except when an operator remains in permanent charge of such elevators or when a care switch is employed;

E. To operate hoisting equipment solely for agricultural purposes, including in the production or harvest of food;

F. To operate hoisting equipment solely for industrial manufacturing purposes; or

G. To operate hoisting equipment solely for logging purposes.

§18605. Hoisting equipment operator license qualifications

1. Qualifications. The board shall issue an appropriate license under this chapter to a person if the following requirements are met.

A. The person is at least 18 years of age;

B. The person holds an active, unrestricted driver's license issued by this State or any other state;

C. The person presents to the board a current certification of medical fitness in accordance with rules adopted by the board under section 18602, subsection 2;

D. The person presents to the board proof of successful completion of a written examination demonstrating relevant competency in the operation of hoisting equipment in the classification for which licensure is sought, in accordance with rules adopted by the board. The examination must incorporate nationally recognized certifications and national guidelines pertaining to the operation of heavy equipment, including guidelines established by the United States Department of Labor and Occupational Health and Safety Administration, as well as standards established by the American National Standards Institute, or its successor organization, or guidelines established by the American Society of Mechanical Engineers, or its successor organization;

E. The person presents to the board proof of successful completion of a practical examination demonstrating relevant competency in the operation of hoisting equipment in the classification for which licensure is sought, in accordance with rules adopted by the board; and

F. The board receives from the person or the person's employer the appropriate license fee.

2. Licensure of persons licensed or certified by another jurisdiction. The board may issue a license to any person under this chapter who holds current licensure to operate hoisting equipment in another state or territory of the United States or who holds current certification by an independent organization accredited by the American National Standards Institute or successor organization for the certification of operators if the person also meets the requirements of subsection A, B, C and F and the current licensure or certification is substantially equivalent to the license sought, as determined by the board by rule.

§18606. Hoisting equipment operator-in-training

1. General requirements. A person who does not hold an appropriate license under this chapter may operate hoisting equipment for an employer as an operator-in-training under supervision in accordance with this section.

A. The employer must provide instruction on the knowledge and skills for the hoisting equipment assigned to the operator-in-training;

B. The employer may only assign to the operator-in-training tasks using the hoisting equipment for which the employer has provided instruction and the execution of which the employer has determined are within the operator-in-training's ability; and

C. The operator-in-training must be continuously monitored on site by an appropriately licensed hoisting equipment operator while operating hoisting equipment by person who:

(1) Is an employee or agent of the employer;

(2) Has the knowledge, training and experience necessary to direct the operator-in-training on the equipment assigned for work; and

(3) Follows operational guidelines and monitoring requirements as specified by rule by the board.

§18607. License revocation or suspension and reissuance

1. Violations; grounds for revocation or suspension. The board may suspend, revoke or refuse to renew the license of a hoisting equipment operator pursuant to Title 5, section 1004. The board may refuse to issue or renew, or the District Court, pursuant to Title 4, chapter 5, may revoke, suspend or refuse to renew, the license of a hoisting equipment operator who is found guilty of:

A. The practice of any fraud or deceit in obtaining a license;

B. Any gross negligence, incompetence or misconduct in operating hoisting equipment; or

C. Violating any provision of this chapter or any rule of the board.

2. Complaints. Any person may register a complaint of fraud, deceit, gross negligence, incompetence or misconduct against any licensed hoisting equipment operator. A complaint must be in writing, signed by the individual making the complaint and filed with the board.

3. Reissuance; replacement. The board may reissue a license to a hoisting equipment operator whose license or certificate has been revoked if 3 or more members of the board vote in favor of that reissuance. The board may issue a new license to replace any license or certificate revoked, lost, destroyed or mutilated, subject to the rules of the board and payment of a fee established by the board by rule under section 18602, subsection 11.

§18608. License expiration and renewal

1. Expiration and renewals generally. A hoisting equipment operator license expires on the last day of December of each odd-numbered year. Any license issued under this chapter is renewable upon satisfaction of the applicable requirement for renewal and payment of the renewal fee as determined by the board by rule under section 18602, subsection 11. The board shall notify every person licensed under this chapter of the date of expiration of that person's license and the requirements and fee that is required for its renewal. A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee established by

rule by the board in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter.

2. Exemptions from expiration and renewal fees. Notwithstanding any other provision of this chapter, the board shall waive requirements for renewal, including examination and renewal fees if a renewal application is made with 90 days after separation from the United States Armed Forces, under conditions other than dishonorable, by a person who failed to renew the person's license because the person was on active duty in the United States Armed Forces and the person submits satisfactory evidence to the board.

3. Required hearing. The board may not refuse to renew a license for any reason other than failure to meet the applicable requirements for renewal unless it provides to the applicant written notice of the denial specifying the reasons for the denial and notifying the applicant of the right to request an adjudicatory hearing on the denial pursuant to Title 5, chapter 375. The board shall hold an adjudicatory hearing at the written request of the person if the board receives the written request within 30 days of the applicant's receipt of the board's written notice.

§18609. Penalty

1. Civil violation. An employer who employs a person who does not hold an appropriate license under this chapter or who operates in violation of section 18606 commits a civil violation for which a fine of not more than \$500 may be adjudged.

Sec. 3. Initial appointments to the State Board of Licensure for Hoisting Equipment Operators. The initial member of the State Board of Licensure for Hoisting Equipment Operators established by the Maine Revised Statutes, Title 5, chapter 375, section 12004-A, subsection 50 who is required to be a licensed hoisting equipment operator pursuant to Title 32, section 18604 is exempt from this requirement, but must meet the requirements under section 18605, subsection 1, paragraphs A, B and C and have worked as a hoisting equipment operator within this State for at least 10 years.

Sec. 4. Appropriation and allocations. *(Will be required)*

SUMMARY

This amendment replaces the bill. This amendment establishes the State Board of Licensure for Hoisting Equipment Operators and requires any person who operates hoisting equipment during construction, demolition or excavation work to be licensed.